

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

LeRoy Koppendraye
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Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of the Request by Great River
Energy for a Certificate of Need for a High
Voltage Transmission Line from the Mud Lake
Substation to the Wilson Lake Substation

ISSUE DATE: September 7, 2006

DOCKET NO. ET-2/CN-06-367

ORDER ACCEPTING FILING AS
SUBSTANTIALLY COMPLETE,
REQUIRING ADDITIONAL
INFORMATION, AND ADOPTING REVIEW
PROCESS

PROCEDURAL HISTORY

On February 28, 2006, Great River Energy (GRE or the Cooperative) filed a notice plan for this project and a petition for exemption from certain filing requirements. The matter was assigned to the current docket.

On May 15, 2006 the Commission issued its ORDER GRANTING AND DENYING EXEMPTIONS, APPROVING A NOTICE PLAN AS MODIFIED, AND CONSOLIDATING DOCKETS.

On July 14, 2006, GRE filed a compliance filing substantiating the implementation of the notice plan as required by the May 15, 2006 Order.

On July 28, 2006, Great River Energy filed an application for a certificate of need.

On August 9, 2006 the Minnesota Department of Commerce (the Department) filed comments on the completeness of the application and on the appropriate administrative review process that should be used to consider the application. The Department also filed comments on GRE's route permit application, which is being considered contemporaneously in Docket No. ET-2/TL-06-980.

The Commission met on August 17, 2006 to consider this matter.

FINDINGS AND CONCLUSIONS

I. GRE's Request for a Certificate of Need

GRE is requesting a certificate of need for a transmission facility consisting of

- a new 12 mile 115kV transmission line that would run between Minnesota Power's Mud Lake Substation on the west to the Mille Lacs Energy Cooperative's Wilson Lake Substation on the east;
- modification of the Mud Lake Substation to accommodate the new line; and
- a rebuilt and expanded Wilson Lake Substation including a new 115/69kV substation.

GRE's proposed transmission facility is a "large energy facility" as defined in Minn. Stat. § 216B.2421, subd. 2(2) and requires, therefore, a certificate of need from the Commission prior to construction.¹

II. Department Comments and Recommendations

A. Review of the Completeness of GRE's Application

The Department of Commerce commented on the completeness of the application and the appropriate review process that should be used to develop the record and consider the merits of the petition.

Regarding the completeness issue, the Department identified four things missing:

- the total cost of the facility and alternatives - Minn. Rules, Part 7849.0260, subp C 1;
- the efficiency under average loading - Minn. Rules, Part 7849.0260, subp. C 6;
- a clear identification of any adjustments made to raw data - Minn. Rules, Part 7849.0270, subp. 4B; and
- the total cost by program - Minn. Rules, Part 7849.0290, subp. F.

The Department recommended that the Commission find GRE's petition complete upon the submission of the additional data.

B. Recommended Process for Review of the Merits

Regarding the process used to review the merits of GRE's request for a certificate of need, the Department noted that GRE had also submitted a request for a route permit for the facility in

¹ See Minn. Stat. § 216B.243, subd. 2.

question, a request which is being processed in Docket No. ET2/TL-06-980. The Department stated that certain efficiencies could be achieved by combining some of the review activity applicable to both requests. Specifically, the Department recommended that the Commission 1) combine the certificate of need's *environmental document* with the *environmental assessment* associated with the route application and 2) combine the public hearings on the certificate of need with those required under the route permitting process.

The Department also recommended that the Commission not refer the request for a certificate of need to the Office of Administrative Hearings, but instead use a comment and reply process as is used for miscellaneous filings and uncontested certification requests in the Biennial Transmission Projects Report. The Department assessed the current case in terms of several specific factors and concluded that this case is suitable for such a comment and reply process.

In lieu of proceeding immediately to a contested case proceeding, the Department proposed an informal or expedited proceeding under Minn. Rules, Part 7829.1000. To determine whether there are contested material facts warranting a contested case proceeding, the Department proposed a comment period for parties to allege contested material facts, with referral back to the Commission for a determination if a party alleges contested material facts. If no such allegations are made, however, the process would proceed to build the record for the subsequent Commission decision through the normal comment and reply comment process rather than direct testimony and rebuttal testimony.

The Department argued that its recommendation would reduce the process overhead while not impacting the quality record supporting the Commission's decision. The Department stated that the time for comments and reply comments should be roughly the same as the time available for direct and rebuttal testimony in a typical contested case.

III. The Commission's Analysis and Action

A. Application Completeness

The Commission finds that GRE's application for a certificate of need is substantially complete. The Commission will require the Cooperative, however, to provide certain additional information, as recommended by the Department and specified in Order Paragraph 1 of this Order.

B. Combining Certain Elements

The Commission agrees that efficiencies can be achieved by combining certain elements that are common to this certificate of need proceeding and the route permit docket. Specifically, the Commission will combine, as it has done in previous cases, two elements. The Commission will combine 1) the environmental review of the certificate of need process with the environmental assessment of the routing proposal; and 2) the public hearings of the certificate of need process with those required under the route permit process.

C. Process for Reviewing the Merits

In previous dockets involving requests for certificates of need, the Commission has viewed it prudent to immediately refer those requests to the Office of Administrative Hearings for contested case treatment, regardless of the size, type, or level of controversy known at that time. The Commission has done so as a precaution, since the statutory timetable for reaching a final decision is so tight and although an application may not appear controversial at the outset, complications may suddenly arise requiring a contested case proceeding. Precious time can be lost proceeding first as an uncontested case, only to learn later that controversial material facts require starting over as a contested case.

In its comments in this docket, however, the Department has set forth a reasonable way to assess the potential for contested facts to arise, has proposed an expeditious way to determine whether contested facts exist, and has proposed a schedule that minimizes the time lost in the event that contested facts do arise requiring a contested case proceeding. GRE stated its general agreement with the Department's recommendation and requested only one modification, addressed in the following paragraph.

In these circumstances, the Commission will adopt the process recommended by the Department with one modification requested by GRE and agreed to by the Department. The parties have agreed that any contested facts must be identified by the date that reply comments are due. To assure that contested facts are identified in a timely manner, the Commission will adopt the agreed upon deadline.

This change also essentially combines the two comment periods initially recommended by the Department (one to identify contested material facts and, if none were identified, a subsequent one to address the merits of GRE's proposal) into one comment and reply period which addresses both whether there are material facts in dispute and the merits of GRE's proposal.

If, by the date reply comments are due, material contested facts are identified and any party requests a contested case proceeding, the matter will be brought back to the Commission for expeditious referral to the Office of Administrative Hearings for a contested case proceeding.

ORDER

1. The Commission accepts the application as substantially complete but directs GRE, the Applicant, to provide the following additional information identified by the Department:
 - the total cost of the facility and alternatives;
 - the efficiency under average loading;
 - a clear identification of any adjustments made to raw data; and
 - the total cost by program.
2. The environmental review of the certificate of need process shall be combined with the

environmental assessment of the routing proposal.

3. The public hearings of the certificate of need process shall be combined with those required under the route permitting process.
4. The review process shall begin with a comment and reply period. Scheduling authority for the review process is delegated to the Executive Secretary. If material contested facts are identified and any party requests a contested case proceeding by the date reply comments are due, the matter will be brought back to the Commission for expeditious referral to the Office of Administrative Hearings for a contested case proceeding. An Administrative Law Judge will be asked to conduct the required public hearing(s) and will be asked to file a summary of those hearings with the Commission.
5. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

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